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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7017 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NAVINCHANDRA ALIAS NATU OMPRAKASH SONI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad passed an order on 22-3-1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short PASA Act)

detaining the petitioner under the provisions of the PASA Act.

2. In the grounds of detention the detaining authority took into consideration four offences registered against the detenu under the Bombay Prohibition Act. The authority also took into consideration statements of two witnesses whose identity has not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. While exercising the powers under Section 9(2) of the PASA Act, the detaining authority recorded a subjective satisfaction that upon verification of the facts stated in the statements of the two witnesses and the fear expressed by them qua the petitioner are found to be correct and genuine and therefore there is need for exercise of powers under Section 9(2) of the PASA Act. The authority after considering the possibility of resorting to less drastic alternative remedy came to a conclusion that since the petitioner is required to be immediately prevented from pursuing illegal and antisocial activities he is required to be detained under PASA Act.

3. The petitioner detenu has approached this court challenging the said order of detention mainly on one ground amongst many grounds. The main ground that is raised is that the statements of two witnesses were recorded by the police on 18-3-1999 and 20-3-1999. The said statements were verified by the detaining authority on 22-3-1999 and the order was also passed on that very day. The statements are stereotype with imaginery facts. The detaining authority has not applied its mind and therefore the exercise of powers under Section 9(2) of the PASA Act.

4. Mr. Patel learned Advocate for the petitioner has restricted his arguments only to the above ground. He has placed reliance on the decision of this Court in of Kalidas C. Kahar vs. State of Gujarat 1993(2) GLR 1659 and submitted that the petition deserves to be allowed.

5. Mr. H.H. Patel, learned AGP on the other hand submitted that it is true that verification and order are of the same day. But he submitted that at times it becomes necessary to pass orders quickly and that does not amount to non application of mind. On being asked pointedly, he was not able to give any explanation or details regarding verification and subjective satisfaction regarding exercise of powers under Section

9(2) of the PASA Act except that the authority verified the statements and found the facts appeared to be correct and genuine.

6. In this regard what transpires is that the statements were verified by the detaining authority on 22-3-1999 and the order was passed on that very day. While doing so the authority recorded subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act.

When an authority exercises powers under Section 9(2) of the PASA Act it has to undertake an exercise of satisfying itself about the correctness and genuineness of the fear expressed by the witnesses. For this purpose it is required to be assessed from the material before it and the statements of the witnesses in this regard. The authority has to consider that exercise of this power would have direct bearing on the right of the detenu of making an effective representation. The authority has therefore to strike a balance between the right of the detenu of making a representation on one hand and the public interest on the other. This responsible task is to be performed by the authority after a careful consideration of the material. This would definitely require time. The affidavit-in-reply does not deal with this question at all. The authority has not clarified as to when the proposal was received, at what point of time the statements were verified, what material was considered for exercise of powers under Section 9(2) of the PASA Act, when the orders were prepared and passed. All this exercise was done in one day and in absence of any material coming forward from the detaining authority in the affidavit in reply, this court is at loss to appreciate as to how the responsible task as stated above was carried out by the detaining authority. In this regard a decision in the case of K.C. Kuhar v. State of Gujarat as reported in 1993(2) GLR 1659 may be profitably employed in service. In view of the above decision and facts of the present case, the petition deserves to be allowed on this ground alone.

7. In this regard reliance is also placed on the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659. The petition therefore deserves to be allowed. The petitioner/detenu Navinchandra, alias Natu Omprakash Soni be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)